

FDD Media Call: What's being missed? Amnesty International, ICC, UN, and Israel

December 5, 2024

Featuring Orde Kittrie, David Adesnik, and Richard Goldberg

Moderated by Elizabeth Robbins

ROBBINS: Good morning. Thank you for joining today's call. My name is Elizabeth Robbins, VP for communications at the Foundation for Defense of Democracies, a nonpartisan research institute focusing on national security and foreign policy. As a point of principle, we do not accept foreign funding.

Joining us for today's call: Orde Kittrie, FDD senior fellow and a law professor at Arizona State University's Sandra Day O'Connor College of Law. He's a leading expert on international law and policy, particularly as it relates to the Middle East, and he's the author of *Lawfare: Law as a Weapon of War*.

Second, Dr. David Adesnik, FDD vice president of research and a Middle East scholar who has conducted significant research into claims of starvation in Gaza.

And third is Rich Goldberg, FDD senior advisor and expert in international organizations who has led efforts to reform the UN and its related agencies.

Today's conversation is on the record and we'll post the recording of today's call to FDD.org and share a transcript within 24 hours. Our panelists will each provide opening remarks and then we'll open up for questions.

You're welcome to submit questions via chat at any time or raise your hand to be recognized after initial comments. Let's get underway. Orde over to you to set the stage on the Amnesty International report accusing Israel of "genocide."

KITTRIE: Thanks. It's a pleasure to be here. Bottom line, Amnesty International is wrong in claiming that Israel is committing genocide in Gaza. The facts of the situation, including Israel's policies and actions, don't fit the legal definition of genocide.

Instead, Amnesty's report systematically and repeatedly mischaracterizes both the facts and the law. For example, Amnesty discounts how Hamas has increased casualty counts by illegally using Palestinian civilians as human shields and by hiding weapons and war fighters in and below homes, hospitals, schools, mosques, and other public buildings.

Indeed... Amnesty's report, bottom line, incentivizes terrorists and authoritarian regimes worldwide to imitate Hamas's tactics of hiding behind human shields to increase actual casualties, of stealing food intended for starving civilians, and of inventing additional civilian casualties out of thin air.

In addition, Amnesty's quotes from Israeli officials, which purportedly demonstrate genocidal intent, are dishonestly edited, and it ignores many other Israeli government statements that made clear there was no genocidal intent.

Amnesty fails to provide any substantive evidence, because there is none, that Israelis are committing or intending to commit genocide. Indeed, Israel's advance warnings and other steps to mitigate harm to Gaza's civilians make clear that Israel's goal is not genocide but, far from it, to minimize Palestinian civilian casualties while lawfully exercising Israel's rights to free hostages, to apprehend October 7th atrocity perpetrators, and to protect Israel's population from further attacks.

It's important to note that genocide is defined and prohibited by a particular treaty adopted by the UN in 1948. The genocide definition, core of it, says, "Genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such, and the acts include killing members of the group, et cetera."

So the debate over whether Israel is committing genocide in Gaza largely turns on the words "intent" and "as such" in the definition. In a nutshell, genocide accusers must prove Israel is killing Gaza civilians intentionally and simply because they're Palestinian, rather than as an unfortunate consequence of Israel's efforts to legally exercise its right of self-defense against Hamas.



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The threshold of proof for a genocide accusation is very high, it's kind of a beyond a reasonable doubt standard. The ICJ has declared that in order for the court to infer the existence of genocidal intent from a pattern of conduct, the evidence must be persuasive and consistent. And genocidal intent must be the only inference, the only inference, that could reasonably be drawn from the acts in question.

That's a very high standard. Is genocide the only inference that could reasonably be drawn from Israel's fighting in Gaza? The answer is no, and that's not just according to me. The Biden administration has, on several occasions, rightly rejected claims that Israel is committing genocide. For example, when South Africa generated a case at the ICJ by accusing Israel of genocide, White House National Security Council spokesman John Kirby condemned South Africa's submission as "meritless, counterproductive, and completely without any basis in fact whatsoever." As recently as November 13th, UK Prime Minister Keir Starmer rejected calls to describe Israeli actions as genocide. The German government has done the same.

Rather than intentionally kill Palestinian civilians for the sake of killing civilians, Israel has taken unprecedented steps to avoid killing Palestinian civilians. Military experts from around the world have repeatedly attested to the fact the measures employed by the Israel Defense Forces to reduce harm to civilians is in many ways unparalleled.

John Spencer, retired US Army major, currently the chair of Urban Warfare Studies at the Modern War Institute at West Point, has concluded that Israel "has implemented more precautions to prevent civilian harm than any military in history -- above and beyond what international law requires," and more than what the US did during its recent wars in Iraq and Afghanistan.

Eleven retired senior military officers and top legal experts from seven different nations recently concluded, "We do not believe the evidence of actual operational practice in any way corroborates the accusation of policies. . . to intentionally attack civilians."

Seven former US prosecutors of Nazi war crimes recently said, "Israel has, in fact, done more than any other military has ever done to minimize civilian casualties during large-scale urban warfare, even sacrificing the lives of many of its own soldiers in the process."

Indeed, Israel has done more to reduce harm to Palestinian civilians than Hamas itself has done to reduce harm to Palestinian civilians. It's Hamas that refuses to end the war by releasing the hostages. It's Hamas that has deliberately built tunnels underneath civilian areas and turned hospitals and schools into military targets. It's Hamas that intentionally impedes efforts of Palestinian civilians to flee to safer areas. And it's Hamas that has seized food the international community has sent for Gaza civilians.

ADESNIK: will talk more about Amnesty International's false claims that Israel's attacks on Hamas are designed to starve Gaza civilians. But I would note that according to COGAT, the Israeli coordinating body for aid into Gaza, by November 26th, 2024, over 1.1 million tons of aid had entered the territory since the beginning of the war. That's half a ton of aid, a thousand pounds of aid, for every man, woman, and child in Gaza's 2 million person population.

Let's think about what real genocide looks like. The Hamas charter calls for the killing of every Jew worldwide. On October 7th, Hamas forces entered Israel and brutally killed or took hostage every man, woman, or child they could find.

Israel has the military capacity to obliterate Gaza, but it's not doing that. It's painstakingly battling Hamas as Hamas hides behind human shields until such time as Hamas releases the hostages or the hostages are rescued.

It's of course entirely appropriate to criticize the Israeli government for its conduct of the war. Every military, including the US's, has made mistakes in war, has had individual soldiers lose their tempers and commit war crimes, and so forth. But the accusation that Israel is committing genocide is outrageous and entirely unsupported by the facts and law.



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ROBBINS: Thanks Orde, for those insights. Over to you, David, to focus on this starvation component of the charges.

ADESNIK: Yeah, thank you, Beth. Thank you, Orde. So it's interesting if you also look at the ICC's criminal charges, their summary in the warrant. Almost three quarters of their word count is dedicated to claiming that Israel engaged in deliberate starvation.

If you look at the 296-page report, to be precise, from Amnesty, it was released at 7:01 P.M. last night Washington time. So I had the pleasure of spending my evening with that long PDF. There's actually 75 pages. A full quarter of the report is dedicated to the claim of starvation.

And let me go through the real reasons why that is not a good claim to be advancing. So one data point to begin with, COGAT, the Israeli authority responsible for facilitating aid, they maintain a digital dashboard that updates regularly on how many trucks have delivered their cargo to the Gaza Strip. It's now over 58,000 and over 1.1 million tons.

So how is it that a country could both be engaging in genocide and sending a tremendous... or facilitating it... it's not Israeli aid, it's facilitating aid from others going into the Gaza Strip.

There's interesting ways in which the Amnesty report and the ICC try to dance around this question. One is to say, "Well, perhaps that's not enough. Perhaps the need is even greater. And that was only a drop." And you can still claim all kinds of obstruction. And on minor points you could say, "Well, there's too many bureaucratic requirements. There's too many items that Israel claims are dual use, have a military use in addition to a civilian use."

And that's why I really want to turn to one of the authoritative sources on this issue, which is the Integrated Food Security Phase Classification, a long and complicated name. They shorten it to IPC. It is the famine monitor set up around 20 years ago to basically provide a more systematic take on many of the crises around the world.

We all know that the plural of anecdotes is not data. And so you can obviously find terrible instances happening in many, many cases. And the purpose of this organization is to try to have a more systematic finding.

And to begin with, its findings were not in any way what Israel wanted to hear. It gained a tremendous amount of attention when in mid-March, in its quarterly report for the beginning of the year, it said that 30% of Gazans were in Phase 5. That is the most severe phase known as catastrophic of hunger. And it forecast that the number would rise to 50% within a few months and that there would be a famine in the northern part of Gaza.

They have a very specific definition of famine. It means a certain number of people are literally dying of hunger every day. In the case of Gaza, it would mean hundreds of people per week.

This led to international alarm, an extensive wave of press coverage, and even statements that famine had already set in, which turned out to be premature. Three months later, the IPC issued its next report: rather than moving upwards to 50%, the number of Gaza residents in the most dire Phase 5 of hunger had been reduced to 15%.

And yet the headline that the IPC used for its own report was that: hunger still prevails, not famine because they don't want to use that word. They haven't met their own criteria for saying it.

And then there was another quarterly report partially released in October, and it found the number of Palestinians and Gaza in Phase 5 was 6%. So we went from 30 down to 15, down to six, despite constant predictions that there would be an increase.

There were no challenges publicly that I know of to the credibility. This was the data entirely trusted by the international community and Israel's critics when it said things were going very badly and famine was imminent, and it's data that's largely been ignored once it got better and told a very different story.

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And moreover, this story is in line with what we know about the aid deliveries. I mentioned the COGAT dashboard. The UN also has a dashboard. It only says its data is really reliable up through May.

When fighting started in the south, it made it harder to collect data. But what we saw was a surge that through cooperation, despite all the animosity between Israeli authorities and the NGOs, and the UN, the number of trucks entering each day increased substantially.

You'll find it buried in this Amnesty report. They have a long discussion of these statistics about how many trucks, but the number of trucks bringing food actually began to exceed the number that brought food every day before the war began.

This debate about numbers of trucks can get a bit complicated. The total number of trucks going into Gaza was around 500 before the war, but that's the total number that was supplying a semi-functional, perhaps, economy. And really the number providing food was much smaller.

So if you read the report... You will be very hard, unless you have been tracking IPC reports for months, reading those reports directly and not press accounts of those reports, to understand that there has been a significant improvement according to the authoritative famine monitor.

And let me just add a couple words on the issue of "intent." So it's really at the very end of the 300-page report where they start getting into the quotes that they allege show that Israel basically has a racist and dehumanizing culture towards Palestinians. Some of the items they list are desperately weak examples. For example, you may have heard Prime Minister Netanyahu talk about a battle between the children of light and the children of darkness. This is condemned as racist and dehumanizing rhetoric rather than, one might say, some anodyne rhetoric that many leaders would use, and similar terms.

They also have to take things out of context. One of the famous quotes is that President Isaac Herzog referred to all Palestinians being involved. And in this case, Amnesty is good about admitting that, later in the same interview, he said, that does not mean Palestinians as civilians are legitimate targets.

So what they do is they cherry-pick the cases of edgy things that Israeli leaders have said. They even acknowledge they've said other things that contradict it: that they say the policy is to bring in aid, the policy is only to target fighters. So it's a weak case. It basically recapitulates much of what South Africa offered in its submission to the International Court of Justice. And that's why, in the end, this is really a somewhat dishonest exercise. I think that they really did everything they could to shape and squeeze the data until it supported their narrative.

And what I really encourage more than anything is for journalists to really dig carefully, especially into that starvation data, because it's easy, when you see terrible stories of people having to eat wild grasses, of not having much nutritious food to eat, of mothers having a hard time nursing... Many terrible things are happening. No one on this call doubts that. In a way, it's more about the question of responsibility, that Hamas launched a war based on its own genocidal ideology.

And that's really also one of the great ironies of this report. In all of its discussion of alleged dehumanizing approaches by Israel, it completely fails to mention, at all, the dehumanizing culture that Hamas and others built in Gaza that led to the October 7th massacre.

ROBBINS: Thanks, David. Over to you, Rich, to outline some policy responses, what should we expect to see from the U.S., and the overall U.N picture.

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GOLDBERG: Yeah, I want to separate out... I think we've dissected some charges that are coming out, again now, from an NGO here. They echo charges that have been brought forward in the past at the International Court of Justice, that has been litigated ad nauseum. We have a lot of public statements, as Orde has gone over, from the U.S government, from other allies, contradicting those allegations. We have a separate body of charges, allegations, now arrest warrants issued by the International Criminal Court that David touched on a little bit there, alleging war crimes. Not just war crimes by, as Orde said, maybe one or two soldiers who did something wrong, but the leadership of Israel. That it was a state-sponsored, intended war crime against the Palestinian people in various ways.

And of course you've probably seen these conversations before. Even if that were true, if you had a unit, if you had some patrol that did something, as has happened in the past in wartime, that was a violation of the laws of war, knowing that Israel has opportunity to investigate itself, has shown the ability, demonstrated its capability to investigate itself as a democracy with rule of law, similar to the United States that investigates itself when its soldiers do something wrong, or the British military that does something wrong... Noting that Israel is not a member of the ICC, like the United States, understanding that the charges are baseless in and of themselves, the jurisdiction is not there, and the double standards created in going after Israeli leaders in this case and trying to equate them with Hamas, as they did from the chief prosecutor, screams anti-Semitism to many people, including me.

We are left with the question of, what is US policy in the face of all of this, in the middle of a presidential transition? So really, the question is not, "What is the Biden administration going to do for the next few weeks?" I think people's question is, "What is the Trump administration going to do January 20th, going forward?" And we're getting some signals out of the future national security advisor, Congressman Mike Waltz, in his public comments; the incoming Senate Majority Leader, Senator Thune, in his comments. We know there has been, in the past, an executive order, during the Trump administration, in 2020, targeting officials of the ICC for the investigations, at that point, of Americans for alleged war crimes in Afghanistan, and of Israeli officials as well.

We've now sort of crossed that Rubicon. We're not even in seeking indictment mode. We're not in waiting for a court to opine. We're in arrest warrant mode. So we are way beyond the Rubicon here, way beyond any red lines in our relationship of the United States with the ICC, as a non-member, and noting that there are still, on the shelf, cold cases, if you will, against the United States that could be brought back to life in the future. The precedent being set here against Israel can be applied very easily against the United States, a non-member of the ICC, not a party to the Rome Statute, military that investigates itself, democracy, rule of law, etc.

So what are we going to do here? Well, baseline, I think we should all expect that, at the very least, we are going to see that old executive order come back to life. There is a legislative version of that that's been sitting in the Senate, stalled in the Foreign Relations Committee, bottled up by the Chairman and the Biden administration for many months, that the House had already passed over. Doesn't look like that has legs to move in the final weeks. There's no discussion of that. But we might expect to see that come back as an executive order very early in a Trump administration.

But the question in my mind is, is that enough? Is that where the conversation is stopping right now? And I don't think so. I think the question now is, will you see more than just sanctions on officials of the ICC, like the chief prosecutor, Karim Khan, and others who were involved in issuing the arrest warrants? Will you see secondary sanctions imposed on the ICC itself?

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And think about what that would mean. That would mean that the bank accounts that the ICC uses would be effectively frozen, because if you conducted a transaction, if you allowed the ICC to make payroll, if you allowed the ICC to pay a vendor, if you allowed any of the countries that make contributions to the ICC to process those transactions, the bank involved would be violating U.S. sanctions at that point. So they won't do that. We know that they will comply. That could potentially halt the operations of the ICC very quickly. If I was an employee of the ICC, I'd be getting my resume on the street right now, because you're probably going to need an income source in just a couple of months, potentially.

And then the other question is, what are we going to do with our allies that are supporters of the ICC? What does it mean that Japan, one of our closest allies in the world right now, where, when we think about our grand strategy, and the threats we face in the Indo-Pacific, and the strategic relationship of the United States and Japan, that Japan would be the number-one donor to the ICC, allowing this to happen right now? When that means that not only is Israel threatened, but Americans are threatened. The blanket of security that covers Japan is under threat, potentially, from this body that Japan is funding.

The Japanese need to get their house in order right now, because when you look at their work on the Security Council this year, not being helpful to U.S. interests, aligning with the pro-Hamas forces, you look at their support for the ICC, you look at their support for UNRWA in the face of all the allegations we now see in front of us, the evidence of terror support, and the Trump administration obviously going to be coming at UNRWA pretty hard, Japan has a lot of explaining to do, and I think this is going to be a serious bilateral issue between the United States and Japan early on.

We have much bigger fish to fry, so to speak, in the world today. I don't want the relationship between Tokyo and Washington bogged down over some silly kangaroo court that shouldn't exist at this moment like the ICC, that has completely overextended its jurisdiction, is now a threat, from a lawfare perspective, to the United States and western democracy.

We should be focused on what really matters to our alliance right now like China, like North Korea. That's where we need to focus. And so I think those conversations are going to be tough ones that need to happen very early on. But this also applies to Germany; it applies to the United Kingdom; it applies to France and Italy and Canada; other major members, donors, supporters of the ICC; NATO members who are asking the United States for major military commitments and support at a critical moment in European security. And so I think all these questions need to get ironed out, and will be ironed out.

Now, should any of these countries actually attempt to enforce the warrants, there obviously are different tools the United States has at its disposal. There's a law going back over 20 years, some people call it the Hague Invasion Act, authorizes the President to whatever he wants to do, basically, to stop the arrest, pursuant to an ICC warrant, of an American or a like ally, which would include the Israeli officials in question.

Now, that doesn't necessarily mean military force. I mean it could, but I think we're thinking in these terms: sanctions, tariffs, other tools of political, economic, diplomatic isolation and consequence. And those could be real. We've seen the president not hesitate, president-elect not hesitate, to use the threat of tariffs in a foreign policy and national security construct, in addition to the use of sanctions.

So I think all of these countries need to get very smart right now. What they really care about, what their priorities are. Is it the ICC, a kangaroo court that has way overextended itself in jurisdiction? Or is it the security commitments of the United States and our close allies? You can't be trying to undermine a close democratic ally on the frontier of fighting our mutual enemies in one region, and claim to be a close ally of the United States, asking for our help to fight that same axis, in another region. It doesn't make sense.

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If our allies believe in this new CRINK dynamic, of China and Russia, Iran and North Korea, working together in a global axis, which I subscribe to and believe is happening, why would you be attacking Israel, that's on the frontier of one of those fronts of that axis? Doesn't make sense. It shouldn't be happening. You're undermining our security. They're undermining their own security, long-term, by doing this.

The UN, as you mentioned... And I'll close with this, we'll wrap it up. I think we're going to be seeing a big reset button hit, obviously when Elise Stefanik enters Turtle Bay. It's going to be very much a new day. I think that you will see something where the United States starts going on offense against its adversaries at the Security Council, using its power to convene an agenda setting to really push issues of the day to the forefront.

I think you'll start seeing, instead of just waiting back for our adversaries to put forward a hostile resolution for us to have to negotiate over or compromise, or water down our own interest, simply saying: you put forward a resolution we don't like, we're vetoing it. We don't mind vetoing. The Russians don't mind vetoing. The Chinese don't mind vetoing. We're not going to feel bad about vetoing anymore. It's not a bad word. Come at our interests, or come at our allies, we're vetoing.

But here's what we're going to do. We're going to start putting forward resolutions that start driving a wedge in your axis, that tell our allies we're going on the record now on key issues. Is Hamas a terrorist organization? No, the UN has never said it is. It's not according to the UN. I would love to see a Security Council resolution declaring them a terrorist organization, and see where the votes fall and Security Council on that. Make China and Russia veto that resolution.

That's an example of the kind of offensive that I think you're going to start seeing. Obviously policies towards UNRWA; the World Health Organization, which has a standing agenda item, which is to attack Israel; the Human Rights Council, which the US had already decided not to run for re-election to, I think you'll see a hostile relationship there, which is absolutely called for, given not just their anti-Israel bias, but the anti-American bias and obviously pro-China bias that you see there; and other organizations through the UN system. There's a lot of work to be done here, a lot of anti-Semitism that has revealed itself very publicly since October 7th. It's not just systemic bias against Israel. It's systemic anti-Semitism within the institution. But remember, as we saw just in the votes in the last 24, 48 hours on the Golan Heights with chaos between Islamic radicals and Iran Shia extremists all fighting each other, and the UN wants to take a vote on the fact that Israel is still occupying the Golan Heights and should withdraw in the middle of that chaos. I mean, are you kidding me? Does that even make sense? And US allies either vote for that or abstain.

It's time to remember that the UN General Assembly isn't just this monolithic institution, it's also a sum of its parts and its parts are UN member states and a lot of them are US allies and partners and foreign aid recipients. And it's time to start having a report card and going to capitals at a very high level saying, "This is disconnected. We're holding you accountable. You can't just go to the UN and hold a position against our interest while you take our security blanket. You take our money, you take our alliance for granted." That's not going to happen anymore and I think that's going to be a major part of the change.

ROBBINS: Thanks, Rich. We'll now move into Q&A. As a reminder, journalists can ask a question by either typing into chat or utilizing the raised hand feature. While we wait, I'll kick us off with a question. David spoke about the misuse of the term starvation. Could you walk us through the term "genocide" a bit more? How is this word understood by the international community and has Amnesty International used that common definition, or is it holding Israel to a different standard or a double standard?

KITTRIE: Sure. So the genocide definition is, there's a very particular definition. It's set forth by a treaty adopted by the UN in 1948 which is titled Convention, on the Prevention and Punishment of the Crime of Genocide. The genocide definition includes a couple of keywords, intent, and as such. The genocide definition, genocide means any of the following acts committed with intent to destroy or in whole or in part a national, ethnic, racial, or religious group as such.

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So the debate over whether Israel is committing genocide in Gaza largely turns on the words intent and as such in the definition. Amnesty, if it's going to accuse Israel of genocide, South Africa, if it's going to accuse Israel of genocide, must prove that Israel is killing Gaza civilians intentionally and simply because they're Palestinian rather than as an unfortunate consequence of Israel's efforts to legally exercise its right of self-defense against Hamas. In wartime, if you can legitimately target a Hamas fighter, an enemy, and there's a whole task set forth. If a civilian is inadvertently killed as part of that, that is potentially legal under international law. What you're not allowed to do, what the Genocide Convention prohibits, is to kill civilians just because they are members of a particular nationality. And that's what Amnesty is arguing that Israel is doing, that Israel is killing civilians because they're Palestinians and I think the facts entirely contradict that.

ROBBINS: Thanks Orde. Over to you David, how does Amnesty grapple with the evidence showing that there's been a substantial amount of aid flowing into Gaza and likely a reduction in hunger within Gaza? In that report you read last night, how do they grapple with that?

ADESNIK: Yeah, there's a long section, maybe 10 to 12 pages where they get into an in-depth discussion of how much is going in, how much is not going in. What I thought was interesting is they certainly cite the IPC, the group I mentioned several times, and they sort of briefly say, "Well, sometimes it says hunger is getting worse, and sometimes it says hunger is getting better." And it's interesting because they know if they actually showed you the numbers from the IPC, you would see a trend toward getting better, it would be rather striking and it would line up with the trend of increasing aid. It's fairly logical that's how much is going in. They also tried to dismantle a number of other claims.

There was an interesting Israeli study done in partnership with the Ministry of Health and scholars in Israel looking at the caloric content of how much aid was going in a certain period, and it seemed that for that period under question, it was actually around 3,000 calories a day per person. Now, they couldn't assume that those were getting to the people in need, we obviously know the problem of looting, but the Amnesty report also tried to downplay that by suggesting it didn't look at the worst period in the war. But in a way that's exactly the point, when there was the worst period and there was the greatest concern about famine, that is precisely when Israel stepped up its efforts to facilitate the entry of aid. So in other words, it has been behaving in exactly the opposite way of what you would expect from a power supposedly interested in committing genocide.

Let me also add a word on double standards, something that has come up. So when we got wind that this report would be coming out, I wanted to see, in what other cases does Amnesty believe that genocide is taking place? Is it with regard to Xinjiang in Western China where there's a mass sterilization campaign and a mass internment campaign? Going through dozens and dozens of publications I could not find an affirmative statement that genocide was taking place in Xinjiang, even though the US government has said that under both the Trump and Biden administrations. What about in Myanmar where there's been tremendous abuses against the Rohingya group? So they note, Amnesty notes that the US has claimed this is genocide and it seemed to be welcoming of this fact, but it also didn't dedicate a report to that subject.

Interestingly, the UN's own special advisor on genocide has repeatedly sounded the warning bell on current efforts in Sudan. It's not to be confused with earlier genocides in Sudan, but once again there's one potentially underway. And what happened, rather than really heeding that, the UN promptly decided not to renew the special advisor's contract because it seems she refused to label what's going on in Gaza as genocide. You could see, her name is Alice Nderitu, she's from Kenya. You can look at her statements on Gaza. She expresses tremendous sympathy with the people of Gaza. She expresses concern for war crimes, but there's a deafening silence. She does not suggest even at all that there is a hint of a risk of genocide because she doesn't see that as the Israeli intention.

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And if you look at really there's been hundreds of pages of worth of Amnesty publications on Israel, they've actually been hinting for quite a while that they were going to come to this genocide finding. And one of the things I found most interesting is they often talk about they're going to show this dehumanizing sort of racist culture in Israel. And I could not find a single report, among around 80 to 90 they've released since October 7th, examining the dehumanizing racist rhetoric of Hamas.

And it's not hard to find. We're all familiar with the famous quote from Hamas official Ghazi Hamad that, "We're going to do October 7th again and again and again until we win." And he's not an outlier. There's a long string of Hamas officials endorsing October 7th as the beginning of their project. They will often add a less than credible denial that there were any civilians killed on that day. But it's pretty clear when you endorse October 7th, you were endorsing a genocidal approach to your project. And yet despite the evidence that it's the other side which has genocidal intentions, Amnesty manufactures the case that Israel is the one that's guilty.

KITTRIE: And I'd add to that, David sort of leads the direction of talking about, why is Amnesty doing this? And I think if you scratch beneath the... You look at Amnesty USA director Paul O'Brien, still their Amnesty USA director, he stated flat out that, "Israel shouldn't exist as a Jewish state." They have an agenda, which is to delegitimize the world's only Jewish state. I'm not aware of him making similar comments about the 23 countries that declare Islam to be the state religion in their constitutions. This is just reserved for the Jewish state, Amnesty's view that it shouldn't exist and efforts through lies such as this report to delegitimize that state and bring closer the day when it might not exist. There's an agenda here. This is not some kind of an even-handed dispassionate analysis of what is really happening in Gaza, it's a screed with an agenda.

ROBBINS: All right, a question in from Lena Argiri with Greek Public Broadcasting, "What references does Amnesty's report make to Hamas's atrocities?"

ADESNIK: So I can answer that. They talk about October 7th. They acknowledge that it happened, they're I think in concert with the same estimates most people have of how many people were killed, they made clear, Hamas is responsible. As I noted, despite all of their focus on dehumanization and how dehumanization is a critical component of preparing in a way for a genocide that they don't touch at all. You would never know that Hamas atrocities on that day grew out of something broader. And that's something you see actually in all of their, as I mentioned, 80 to 90 publications on the war since October 7th. They don't talk about dehumanization. They don't even talk about Hamas's previous record of suicide bombings. Interestingly, they have one item which is clearly an effort to sort of shift some of the blame for October 7th to Israel. It's sort of a blog like 'what you need to know.'

So did the conflict begin on October 7th? No, the conflict began earlier with Israel's systematic apartheid, occupation, and oppression. And this is the premise you see all along, Amnesty has decided that Israel is the aggressor and the victimizer in this complicated 120-year conflict and that Palestinians are the victims. It doesn't want to bring forward the evidence showing in previous cases that Hamas has a doctrine that enables it to kill civilians and acts on that doctrine, that there was dozens of suicide bombings and other attacks, even attacks that have gone on, not on the scale of October 7th, but since then. And it's really just not willing to grapple with it. So as I said, they certainly acknowledge October 7th, there's no denial of October 7th, but the critical context that shows a genocidal ideology behind October 7th and other Hamas actions, that's absent.

ROBBINS: Okay. Rich, can you tell us more about what to expect over the next few weeks from a lame duck Biden administration and then from a Trump administration? I mean, you mentioned the ICC is a new organization, the US is not a party, there are ways. What is the future of the ICC and in general, what will the Trump administration approach be to the UN?

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GOLDBERG: Yeah, I'll actually talk a little more on the lame duck side because I think I probably gave a lot of sort of the preview of Trump on ICC, Trump on UN with Ambassador Stefanik. We can talk more about it if anybody has follow up questions there. We do still have a lame duck period, and I do think that there is anxiety, not misplaced, that something could still happen in the lame duck that would be an attempt to tie the incoming administration's hands, at least in international law. It's not without precedent. The Obama administration did this on their way out of office in 2016 we remember with the UN Security Council resolution that declared all of the supposed occupied territories that would include the settlements in the West Bank, Judea and Samaria, East Jerusalem, which would also include the Western Wall and other holy sites of Jews, Christians, others, to be illegal under international law.

Now obviously this did not actually constrain the policies of the Trump administration, if you look at the record, US policy in many ways ignored that Security Council resolution and operated on its own policy basis, saying that in fact, those settlements were not inherently illegal under international law. Now the Biden administration has brought that definition, that memo back into policy so it's aligned with that Security Council resolution today.

The question is, in the context of whatever the administration might be cooking up with the Saudis behind the scenes in the context of a normalization deal, there's been talk of a US-Saudi bilateral series of arrangements that would be announced in the defense space, in the nuclear energy space, and then a holding place for Israel under certain parameters that the US and Saudi Arabia would agree to, but that Israel doesn't agree to. Could that be codified at the Security Council, which could in fact be averse to normalization and make it more challenging to get normalization down the road between Saudi Arabia and Israel, even though some would say that's meant to put pressure on Israel to make concessions to the Palestinians, to make that normalization possible. Might you see some sort of codification of the executive order that exists today on supposed West Bank extremists or settler extremists that we have seen. In truth, we have seen this grow from very limited sanctions on a couple of bad apples in Israeli society to now organizations, individuals, nonprofits, companies now being targeted and an architecture really of sanctions against Israel and Israelis for having a presence over the green line in the West Bank and East Jerusalem. In truth, this is the architecture, the building blocks of a BDS campaign within the US government that's sponsored. There's financial warnings put out by the Treasury Department for banks. "Don't process transactions that are coming out of the West Bank. You don't know if they might be connected to West Bank extremism, et cetera."

So I expect that executive order will be rescinded, perhaps day one on January 20th by the incoming Trump administration. Might this administration try to lock in something for the future knowing that that EO will be rescinded with a Security Council resolution, or will other actors try to do that and the US might think about abstaining? Obviously there is a push to strip the credentials of Israel in the UN General Assembly. Now that obviously can't actually happen under the charter without the UN Security Council resolution approving that, and I can't imagine this administration would do that. But what is their take going to be as this comes through the credentialing committee potentially or into the GA? How is this administration going to fight back on those attempts? Obviously there are existing laws, there are discussions of increased actions by Congress or by an executive in the next administration to counter such efforts.

These are all the questions I think are still bubbling up within the lame duck context. And if I were to say one thing to the current administration, it's simply a word that I know President Biden likes to use. And that is "don't." Don't do this. Don't tie your incoming successor's hands the way that Obama did in 2016. Don't try to constrain Israel in the peacemaking space. Don't try to create an architecture in international law like you have in US law to lay the building blocks for BDS against Israel. Do nothing. Veto, as he has already done and as the president has already directed the Security Council. So we have one piece of evidence so far there has been an adverse Security Council resolution put forward calling for an immediate ceasefire in Gaza without tying that to the release of hostages. The Biden administration vetoed that resolution. I give them full credit for doing that. That should be the posture going forward. Do no harm until January 20th.

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KITTRIE: So I'd like to add, actually... If there isn't a question, Beth, that you were about to raise, I'd love to add a little bit to what Rich said and that has to do with the credentials issue. There are repeated press reports that the Palestinians and their allies are seeking to have Israel's credentials for participation in the UN General Assembly rejected. So what does this mean exactly? The Palestinian Authority President Mahmoud Abbas has repeatedly urged the UN to suspend Israel or expel Israel from the UN as a whole. But the UN charter specifies that a UN member state may be suspended or expelled only upon the recommendation of the Security Council. So the council in which the US possesses a veto has not made and will not make a recommendation to suspend or expel Israel. So the Palestinians and their allies have been planning an end run in which they would gin up a General Assembly vote blocking Israel's participation by rejecting its credentials.

This is the international diplomatic equivalent of a gate attendant dishonestly claiming a valid passport is false. This is something seen... Rumors that the Palestinians might try in the coming weeks. As it happens, this would trigger a US law from the 1980s which requires the US in these circumstances to suspend its own participation in the UN organ or agency that suspends Israel's credentials and also reduce its annual contribution to the UN by 8.34% per month until the US reaches zero. Now, this is a very powerful tool in part because the UN is a major recipient. The US is the leading contributor to the UN. US contributions to the UN reportedly account for one-third of the organization's total budget. Specifically the US contributes 22%, \$1.54 billion in 2024, of the UN's core administrative budget. The US also contributes 25% of UN peacekeeping funds, \$1.37 billion in 2024. And the US contributes some \$10.4 billion per year in voluntary contributions to various UN related agencies.

So if the Palestinians and their allies move forward to try to strip Israel of its credentials to participate in the UN General Assembly, the US may not be able to stop it, but the Palestinians and their allies should be aware that this will trigger... And there is no waiver. This will trigger not only US withdrawal of itself from the UN General Assembly, but a US withdrawal of billions of dollars in UN funding. And I don't know about the Biden administration, but Donald Trump has already been very critical of the UN and he may well be highly motivated to enforce this cutoff with regard to the UN. So this is a way in which the battle between the US and the UN over the UN's biased and totally illegitimate mistreatment of Israel may come to a head in the coming weeks.

ROBBINS: Okay, we're almost at time. I'm going to ask each of our panelists to offer a brief wrap-up. Before we do that, thanks to them and to the reporters on this call. Thanks also to FDD's Joe Dougherty and Ellie Bufkin for their support. Feel free to shoot us an email at press@fdd.org and we'll be glad to connect you directly with these experts for follow-up conversations. To wrap it up, let's start with Orde, then David, and then Rich will bring us home.

KITTRIE: Yeah. And I see there's actually a question here. From Thomas Watkins of The National News, "Are there any executive orders Trump can implement on day one that would impact the ICC?" Yes, indeed. The executive order that President Trump imposed on previous ICC prosecutor Fatou Bensouda and one of her aides, they basically banned them from the US financial system and also imposed a Visa ban. That executive order had an impact. Reuters reported that Fatou Bensouda, all of a sudden she was unable to use her credit cards. And if I recall correctly, her mortgage was frozen. This is an executive order that the Trump administration could resurrect and impose on ICC prosecutor Karim Khan and his top aides that have been involved in the arrest warrants against Israeli officials. This does not require legislation. The president already has authority to do this under the International Emergency Economic Powers Act. It's worth noting that it would be easy to resurrect that previous executive order. It had been canceled by Biden, but you can resurrect it within minutes of the President being sworn in on January 20th.

ROBBINS: All right. Thanks. Barring any other questions, we'll go back to you, Orde, for some follow up and then we'll end with David and then Rich.

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KITTRIE: Yeah, thanks. So my bottom line is that it's of course entirely appropriate to criticize the Israeli government for its conduct of the war. Every military, including the US's, has made mistakes in war, had individual soldiers lose their tempers and commit war crimes and so forth. Individual soldiers who lose their tempers and commit war crimes should be held accountable. And in fact, the International Criminal Court by its statute defers to countries. There's a policy of complementarity. If it's a country like the US or Israel... First of all, if it's not a member, then the ICC shouldn't be prosecuting their leaders. But second of all, even if they were members, if it's a country that has a robust system for holding violators accountable, then the ICC is required by its own statute to butt out. The ICC needs to do that with regard to these warrants against Israel. And meanwhile, circling back to Amnesty International's accusation that Israel's committing genocide, it's really outrageous and entirely unsupported by the facts and law.

ADESNIK: I'll go next. And I think what this comes down to is double standards and bad evidence. I spoke in more detail before about how there's a double standard both in terms of treatment of Israel vis-a-vis Hamas, and in terms of Amnesty not making findings of genocide in other cases. And in terms of bad evidence, I think it's important for people to read as much as they can of this long report with a critical eye. As a heavy brick on your desk, it seems very impressive, it's well-designed, it's well-written. It's argued with confidence, it's argued with force, and yet all of that can't hide the fact that it's based on flimsy evidence, flimsy evidence of any intent to commit genocide, flimsy evidence that actions related to aid amount to any kind of genocide, and flimsy on other points I would go into in greater detail with more time. I would say don't be fooled by the impressive package. What's inside is very, very disappointing.

GOLDBERG: And I'll just close by also answering Thomas Watkins' question. I would recommend day one, an executive order be ready for President Trump to authorize and impose sanctions on all ICC officials involved in issuing these arrest warrants but also on the ICC itself as an institution. I would attempt to grind the institution to a halt operationally and financially. The bank accounts that the ICC uses would effectively no longer be accessible to them, service providers would have to cut off service. I think there is an opportunity here to grind it to a halt. And then for any US ally that is a top donor to the ICC, Japan, number one of course, and then Germany, the UK, France, on down, serious diplomatic conversations about choosing right now between the United States and our security framework in the world and the adversaries of democracy, those that stand against the US-led security framework, whether that be in the Middle East with our close ally Israel or other places in the world as well. And so I think that's tough conversation ahead with Tokyo, Berlin, London, Paris, Ottawa, and others.

ROBBINS: We'll end it there precisely on time. Thanks again to our panelists, KITTRIE, ADESNIK, and GOLDBERG. This concludes today's call.